

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND BRENNAN MICHAEL GIESLER

Come now Brennan Michael Giesler ("Licensee") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered 2014038692 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee holds two active broker associate licenses from the Commission. The first license, license number 2005036586 ("2005 license"), was issued by the Commission on October 31, 2005. The license is current and active but on probation, as described below. The second license, license number 2014038692, was issued by the Commission on October 29, 2014. The license is current and active.

3. On or about December 13, 2012, Licensee renewed his 2005 license with the Commission. On his renewal application Licensee reported a 2011 conviction. Licensee pled guilty and was convicted of possession of a controlled substance, except 35 grams of marijuana, in the Circuit Court of St. Charles County, Missouri. Accordingly, on or about February 24, 2014, the Commission filed a complaint at the Administrative Hearing Commission seeking authority to discipline Licensee's 2005 license as a result Licensee's conviction pursuant to § 339.100.2(18), RSMo. On or about June 11, 2014, the Administrative Hearing Commission entered its Default Decision finding cause to discipline Licensee's 2005 license.

4. On or about April 1, 2015, the Commission held a hearing to determine what, if any discipline, was appropriate to take against Licensee's 2005 license. On or about April 7, 2015, the Commission entered its Order placing Licensee's 2005 license on probation for a period of two years.

5. Section 339.040.1, RSMo, states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, associations, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or broker salesperson in such a manner as to safeguard the interest of the public.

6. Licensee's conduct, as described in paragraphs 3 through 4 above, constitutes cause to discipline Licensee's license, license number 2014038692, pursuant to § 339.100.2(16) and (18), RSMo.

7. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(16) and (18), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Joint Agreed Disciplinary Order

8. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

9. The terms of discipline shall include that **Licensee's license shall be on probation for two (2) years.** Licensee's broker associate license, license number 2014038692, is hereby placed on PROBATION for two (2) years. During the period of probation on his broker associate license, Licensee shall be entitled to practice as a real estate broker associate provided he adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

10. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:

- a. If at any time during the disciplinary period Licensee wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Licensee must obtain the Broker Acknowledgement form from the MREC.
- b. Licensee shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of residence and business. Licensee shall notify the MREC in writing within ten days of any change in this information.
- c. Licensee shall timely renew his Missouri real estate broker associate licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain his licenses in a current and active state. During the disciplinary period, Licensee shall not place his licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensee may surrender his real estate licenses by submitting a letter to the MREC. If Licensee applies for a real estate license after surrender, Licensee shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.
- d. Licensee shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.
- e. Licensee shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.
- f. During the probationary period, Licensee shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.
- g. Licensee shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

11. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

12. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

13. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

14. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

15. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

16. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement

agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.


18. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If the Licensee does not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEE


Brennan Michael Giesler

Date April 19th, 2015

COMMISSION


Joseph Denkler
Executive Director
Missouri Real Estate Commission

Date April 30, 2015